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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/613,306

07/07/2003

James L. Rapier III

8878-002

4309

4678 7590 03/19/2007  
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EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT

PAPER NUMBER

3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/613,306

Applicant(s)

RAPIER, JAMES L.

Examiner

James O. Hansen

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3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 12, 13 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-11 & 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rubsam-Tomlinson [U.S. Patent No. 5,938,305]. Rubsam-Tomlinson (figures 1-8) teaches of a kitchen trash container system (fig. 1) that is capable of moving into and out of a cabinet frame (note col. 4 – partially depicted as 72) having inherent upper and lower portions, the system comprising: a tray (22) slidably movable into and out of the interior of the cabinet frame; a slide mechanism (70) operably associated with the tray and frame interior; a waste container (50) carried by the tray and movable with the tray to enter the frame interior and receive discharge waste and move out of the frame interior to enable the waste to be emptied, with the container able to reenter the frame interior, the tray having a structural configuration {viewed as the main housing with attached front panel (60)} substantially covering the slide mechanism to prevent dust and waste collection on the slide mechanism [such as when the system is seated within the cabinet frame, i.e., the front panel attached to the tray basically covers the slide mechanism and prevents dust and other items from access to the mechanism when since the front panel blocks access into the cabinet frame interior when the tray is moved into the cabinet frame interior – so far as broadly recited]. The tray has a base portion {broadly viewed as the middle portion of the main housing} and the slide mechanism operably connects with the tray within the base portion. The slide

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mechanism connects with either a lower portion or upper portion of the cabinet frame depending upon the intended use of the user [It is noted that the limitations in claims 3, 4, 6 & 7 have been given wide latitude in scope since the argument could be made that the elected embodiment may read on either of the limitations, i.e., the lower or upper portion recitations, depending upon the preferred mounting location as determined by the user. Since applicant's device may entail both situations, the prior art has been afforded the same broad functionality since the structures are so similar in scope, function and design]. The slide mechanism includes two pairs of cooperating slides (one pair on each side – fig. 2). As to claim 9, the tray side walls may be viewed as the outer frame walls of the front panel as shown in figs. 1 and 2. The walls covering the slide mechanism in the same manner as noted above when the assembly is in the retracted position in relation to the cabinet frame [when looking at the assembly as shown in fig. 5, the slide mechanism is concealed from view when the assembly is within the cabinet frame]. As to claim 11, one pair of slides are held within one tray side wall with the other pair of slides held within another tray side wall [within being broadly viewed as “within the boundary of” for example]. As to claims 13 & 14, the slide mechanism may engage or be operably associated with an upper interior side wall (72) of the cabinet frame.

### ***Response to Arguments***

3. Applicant's arguments filed December 18, 2006 have been fully considered but they are not persuasive. As to applicant's remarks concerning the tray of Rubsam-Tomlinson, note the following: the position is put forth that the tray does move into and out of the cabinet frame interior in as much as applicant's system performs the

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same function in view of the minimal depiction in the elected embodiment. The panel (60) that is connected to the tray has been cited as being able to perform the "covering" limitation, such as when the tray is in the housed position. It is noted that this limitation has been given a reasonably broad interpretation since the case can be made that applicant's system does not cover the slide mechanism when in a fully extended position i.e., it appears that only a portion of the slide mechanism is covered on a partial top surface and partial side surface since the slide mechanism is essentially two linear or extensible slide elements [one element being covered and the other not]. As to applicant's assertion that a waste container is not disclosed, note the following: The container (50) is housed within the tray and is used to store waste material of low level moisture. The examiner does not disclose that panel (60) carries the tray, rather tray (22) carries the container and panel (60) is part of the tray or a component thereof. Accordingly, the position is put forth that the prior art rejection adequately teaches all the limitations as presently amended.

### **Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. German publication DE 3516547 describes a movable trash container system.
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

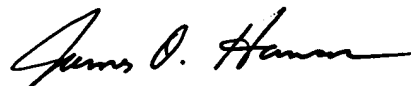
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
March 16, 2007